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## ☒Cuba Sí!: A Tribute to Professor David Bederman and a Letter to President Obama

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## **¡CUBA SÍ!: A TRIBUTE TO PROFESSOR DAVID BEDERMAN AND A LETTER TO PRESIDENT OBAMA**

*Frank J. Vandall\**

My chief memory of David Bederman is his tremendous intellect and interest in solving challenging international legal issues. He often argued for the just use of beaches<sup>1</sup> and an island, Antarctica.<sup>2</sup> His first lecture to the Emory faculty dealt with the critical importance of a very small lighthouse in southwestern Europe.<sup>3</sup> David, I am sure, would have enjoyed discussing the question of the United States' recognition of Cuba. Indeed, his home in Florida faces Cuba. I therefore dedicate this Tribute to my irreplaceable colleague, David Bederman.

Dear President Obama:

At this moment the United States is in the midst of a deep recession and several wars. I know you are searching for positive accomplishments in order to prepare for the 2012 elections. Improving the economy will require the assistance of everyone, so may I suggest a small step with substantial economic benefits: full legal recognition of Cuba. This island is our neighbor, only ninety miles from Key West.

Four critical considerations form the foundation of the argument for a full recognition of Cuba. First, economics. Because of our recession, all new trade is a good thing. From our side, we could export automobiles, motorcycles, heavy equipment, food, and electronics to Cuba.<sup>4</sup> From Cuba, they could

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\* Professor of Law, Emory University School of Law. I sincerely appreciate the research assistance of Ruth Dawson. Mistakes are mine, however.

<sup>1</sup> David J. Bederman, *The Curious Resurrection of Custom: Beach Access and Judicial Takings*, 96 COLUM. L. REV. 1375 (1996).

<sup>2</sup> David J. Bederman, *Theory on Ice: Antarctica in International Law and Relations*, 39 VA. J. INT'L L. 467 (1999) (reviewing CHRISTOPHER C. JOYNER & ETHEL R. THEIS, *EAGLE OVER THE ICE: THE U.S. IN THE ANTARCTIC* (1997); DONALD R. ROTHWELL, *THE POLAR REGIONS AND THE DEVELOPMENT OF INTERNATIONAL LAW* (1996); and GOVERNING THE ANTARCTIC: THE EFFECTIVENESS AND LEGITIMACY OF THE ANTARCTIC TREATY SYSTEM (Olav Schram Stokke & Davor Vidas eds., 1996)).

<sup>3</sup> David J. Bederman, *The Souls of International Organizations: Legal Personality and the Lighthouse at Cape Spartel*, 36 VA. J. INT'L L. 275 (1996).

<sup>4</sup> NICHOLAS A. ROBINS, *THE CULTURE OF CONFLICT IN MODERN CUBA* 117 (2003) (stating that Cuba's "material needs are so extensive it is mind-boggling").

export rum, sugar, cigars, and music to the United States.<sup>5</sup> Many of our citizens would love to visit Cuba and vice versa.<sup>6</sup> Prior to the revolution, Cuba was a resort destination for many Americans. This new recognition is a win-win solution.<sup>7</sup>

Second, the three-hundred-pound gorilla at the table is the fact that Cuba is a communist government.<sup>8</sup> But because President Nixon opened China to trade with the United States forty years ago, communism has become a nonissue.<sup>9</sup> Today China is a huge trading partner<sup>10</sup> and our largest creditor.<sup>11</sup> The word *communist* is no longer used in a derogatory fashion. Indeed, Russia, a formerly communist nation, has adopted numerous democratic reforms, such as free elections.<sup>12</sup> Quite simply, communism is no longer a threat to us—just the opposite. Clearly, the best way to further democracy is to trade with a country and encourage them to visit us in order to see how we live.<sup>13</sup>

The rest of the world is travelling to Cuba: Germany, Spain, Canada, and Austria, for example.<sup>14</sup> Tourism is only a part of their trade. Recognition of Cuba would be a large step toward forging links with other nondemocratic countries.<sup>15</sup>

Third, as a community developer in Chicago, you, Mr. President, are keenly aware of the importance of encouraging everyone in the community to

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<sup>5</sup> Hilary M. Becker, *Cuba: Potential or Potential Threat*, J. ACAD. BUS. & ECON., Feb. 2003, at 1.

<sup>6</sup> See Romina Ruiz-Goiriena, *Could the U.S.—Cuba Travel Ban End Soon?*, TIME (Nov. 4, 2009), <http://www.time.com/time/world/article/0,8599,1934416,00.html> (“If the travel ban were lifted altogether, recent studies suggest some 3 million Americans would visit Cuba each year.”).

<sup>7</sup> See David A. Perez, *America’s Cuba Policy: The Way Forward—A Policy Recommendation for the U.S. State Department*, 13 HARV. LATINO L. REV. 187, 211 (2010).

<sup>8</sup> Philip W. Bonsal, *Cuba, Castro and the United States*, 45 FOREIGN AFF. 260 (1967) (discussing the evolving relations between communist Cuba and the United States).

<sup>9</sup> 2 STEPHEN E. AMBROSE, *NIXON: THE TRIUMPH OF A POLITICIAN, 1962–1972*, at 439 (1989).

<sup>10</sup> *Top Trading Partners—Total Trade, Exports, Imports: Year-to-Date March 2012*, U.S. CENSUS BUREAU, <http://www.census.gov/foreign-trade/statistics/highlights/top/top1203yr.html> (last visited July 16, 2012) (listing China as the third-largest trading partner of the United States).

<sup>11</sup> David Barboza, *China’s Treasury Holdings Make U.S. Woes Its Own*, N.Y. TIMES, July 19, 2011, at B1.

<sup>12</sup> See MICHAEL McFAUL ET AL., *BETWEEN DICTATORSHIP AND DEMOCRACY: RUSSIAN POST-COMMUNIST POLITICAL REFORM 23* (2004) (“The advent of competitive elections in the Soviet Union and then Russia certainly contributed to the reclassification of the country as a democracy.”).

<sup>13</sup> See Perez, *supra* note 7, at 196, 201.

<sup>14</sup> See *Cuba*, DESTINATION360, <http://www.destination360.com/caribbean/cuba> (last visited July 16, 2012).

<sup>15</sup> See Perez, *supra* note 7, at 190, 192, 200.

work together.<sup>16</sup> Since 1962, we have been “walled-off” from Cuba.<sup>17</sup> In the main, U.S. citizens are not permitted to visit or purchase products made in Cuba.<sup>18</sup> Cuban visits to the United States are severely restricted, as well.<sup>19</sup>

We voice economic human rights but do nothing to change the legal foundation of our relationship with Cuba. Clearly, because of President Kennedy’s courageous stance, there are no Russian missiles in Cuba today.<sup>20</sup> It is not an economic, political, or military threat.

Fourth, historically, a team of revolutionaries, including Che Guevara and the Castro brothers, overthrew the Cuban dictator, Fulgencio Batista.<sup>21</sup> Fidel Castro was elected President of Cuba in 1976.<sup>22</sup> Castro has been Cuba’s unchallenged leader since 1959, despite this later election, and one of his first accomplishments was to nationalize the private land and turn Cuba into a communist state.<sup>23</sup> This nationalization of the land is the heart of our disagreement with Cuba today.

The state took the private land in Cuba and redistributed it to “other” Cuban citizens.<sup>24</sup> That was over fifty years ago and is not likely to change, except perhaps through a negotiated settlement.<sup>25</sup>

A fair question is where the former owners of the Cuban land are. The answer is that many of them now live in Florida, although that is not completely accurate.<sup>26</sup> Most of the elite former land owners are now

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<sup>16</sup> Barack Obama, *Why Organize? Problems and Promise in the Inner City*, ILL. ISSUES, Aug. & Sept. 1988, at 40.

<sup>17</sup> 1 PETER BUCK FELLER & MATTHEW T. MCGRATH, U.S. CUSTOMS AND INTERNATIONAL TRADE GUIDE § 17.03 (2d ed. 2008).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Brian Dooley, *The Cuban Missile Crisis—30 Years On*, HIST. TODAY, Oct. 1992, at 6, 8 (“Castro is now regarded in Washington as an eccentric neighbour, noisy but harmless.”).

<sup>21</sup> JANE FRANKLIN, CUBA AND THE UNITED STATES: A CHRONOLOGICAL HISTORY 129 (1997).

<sup>22</sup> *Id.* at 129.

<sup>23</sup> See *id.* at 21, 30.

<sup>24</sup> *Id.* at 21. “The Cuban government enacts the first Agrarian Reform Law, putting a limit on land holdings and expropriating the remainder . . . . The expropriated land along with land already owned by the state will be transferred to cooperatives or distributed free of charge . . . .” *Id.*

<sup>25</sup> Matias F. Travieso-Diaz, *Alternative Remedies in a Negotiated Settlement of the U.S. Nationals’ Expropriation Claims Against Cuba*, 17 U. PA. J. INT’L ECON. L. 659 (1996).

<sup>26</sup> See JAMES S. OLSON & JUDITH E. OLSON, CUBAN AMERICANS: FROM TRAUMA TO TRIUMPH 109 (1995).

deceased.<sup>27</sup> It is their children who now wage “war” with Cuba and support the embargo.<sup>28</sup> These surviving heirs fight to have their property returned. The offspring have an alternative solution at hand; they can sue for justice in the World Court.<sup>29</sup> Of course, the surviving children of the exiles have selected a different path.

They lobby the U.S. Congress and elect Florida leaders who promise to keep up the fight and the “wall” with Cuba.<sup>30</sup> But look at the cost to the United States. The economic embargo provides a foundation for the continuing rage of several thousand Cuban expatriates but, in the process, imprisons over 300 million American citizens.<sup>31</sup>

Mr. President, you have a unique opportunity to step up and tell the world and the children of the former land owners of Cuba that you will end the embargo now in order to grow the economies of the United States and Cuba. Tell them the “Cold War” is officially over, we are economic friends with China and Russia, and we should also be economic friends with our close neighbor, Cuba.<sup>32</sup>

President Obama, the time to end the sanctions against Cuba is now. The economic embargo has hurt us worse than it has Cuba. We are imprisoned in

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<sup>27</sup> See *id.* (“At the turn of the century, most of the first-wave Cuban immigrants will be elderly people, and by 2010 most of them will be [deceased].”).

<sup>28</sup> See Greg Allen, *Children of Cuba Remember Their Flight to America*, NAT’L PUB. RADIO (Nov. 19, 2011), <http://www.npr.org/2011/11/19/142534943/pedro-pan-childrens-life-altering-flight-from-cuba> (“There’s something . . . that most of the Pedro Pan kids still share, 50 years later. They’re firmly opposed to any normalization of relations with the Castro regime . . .”). Florida Senator Marco Rubio likes to say that his parents were Cuban exiles, but in fact, they left before the revolution. Manuel Roig-Franzia, *Rubio’s Story of Family Embellishes Facts*, WASH. POST, Oct. 21, 2011, at A1.

<sup>29</sup> See *The Court*, INT’L CT. JUST., <http://www.icj-cij.org/court/index.php?p1=1> (last visited July 16, 2012) (“The Court’s role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.”). The United States could bring suit on behalf of children of the original landowners.

<sup>30</sup> Allen, *supra* note 28.

<sup>31</sup> Ruiz-Goiriena, *supra* note 6. As of July 2012, the U.S. Census Bureau approximated the U.S. population to be over 313 million. *U.S. & World Population Clocks*, U.S. CENSUS BUREAU, <http://www.census.gov/main/www/popclock.html> (last visited July 16, 2012). American citizens are not free to visit Cuba.

<sup>32</sup> See MATTHEW EVANGELISTA, UNARMED FORCES: THE TRANSNATIONAL MOVEMENT TO END THE COLD WAR 11 (1999) (“Leaders of NATO, the Warsaw Pact, and a dozen nonaligned European countries . . . met in Paris in November 1990 to sign the CFE treaty. They declared a formal end to the Cold War . . .”).

our own land and because of the embargo appear petty to the rest of the world.<sup>33</sup>

¡Cuba sí!

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<sup>33</sup> See Perez, *supra* note 7, at 194.